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CRUZ and SERGEANT RYAN PARK

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

URIEL NIETO,

Plaintiff,

v.

CITY OF VISALIA, a municipal  
entity; CHIEF JASON SALAZAR, in  
his individual and official capacity;  
OFFICER ANTONIO MATOS;  
OFFICER ALEXANDER CRUZ and  
SERGEANT RYAN PARK and DOES  
1-5, inclusive,

Defendants.

Case No. 1:24-cv-00741-JLT-  
BAM

**~~PROPOSED~~ STIPULATED  
PROTECTIVE ORDER**

**IT IS HEREBY STIPULATED** by and among the Parties hereto,  
through their respective counsel of record, that the Court grant a protective  
order, as follows:

**1. PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this action are likely to involve  
production of confidential, proprietary, or private information for which  
special protection from public disclosure and from use for any purpose other  
than prosecuting or defending this litigation would be warranted.

1 Accordingly, the Parties hereby stipulate to and petition the Court to enter  
2 this Stipulated Protective Order.

3 The Parties acknowledge that this Stipulated Protective Order does not  
4 confer blanket protections on all disclosures or responses to discovery and  
5 that the protection it affords extends only to the specified information or  
6 items that are entitled, under the applicable legal principles, to treatment as  
7 confidential.

8 The Parties further acknowledge, as set forth below, that this  
9 Stipulated Protective Order creates no entitlement to file confidential  
10 information under seal, except to the extent specified herein; Eastern District  
11 Local Rules 141, 141.1 and 251 set forth the procedures that must be  
12 followed and reflects the standards that will be applied when a party seeks  
13 permission from the court to file material under seal.

14 Nothing in this Stipulated Protective Order shall be construed so as to  
15 require or mandate that a Party disclose or produce privileged information  
16 or records that could be designated as Confidential Documents/Protected  
17 Material hereunder.

## 18 **2. GOOD CAUSE STATEMENT**

19 Defendants contend that there is good cause and a particularized need  
20 for a protective order to preserve the interests of confidentiality and privacy  
21 in peace officer personnel file records and associated investigative or  
22 confidential records for the following reasons:

23 First, Defendants contend that peace officers have a federal privilege  
24 of privacy in their personnel file records: a reasonable expectation of privacy  
25 therein that is underscored, specified, and arguably heightened by the  
26 *Pitchess* protective procedure of California Law. *See Sanchez v. Santa Ana*  
27 *Police Department*, 936 F.2d 1027, 1033-1034 (9<sup>th</sup> Cir. 1990); *Hallon v. City*  
28 *of Stockton*, 2012 WL 394200, \*2-3, 5 (E.D. Cal. 2012) (concluding that “while

1 [f]ederal law applies to privilege based discovery disputes involving federal  
 2 claims,” the “state privilege law which is consistent with its federal equivalent  
 3 significantly assists in applying [federal] privilege law to discovery disputes”);  
 4 *Soto v. City of Concord*, 162 F.R.D. 603, 613, n. 4, 616 (N.D. Cal. 1995) (peace  
 5 officers have constitutionally-based  
 6 “privacy rights [that] are not inconsequential” in their police personnel  
 7 records); *cf.* Cal. Penal Code §§ 832.7, 832.8; Cal. Evid. Code §§ 1040-1047.  
 8 Defendants further contend that uncontrolled disclosure of such personnel  
 9 file information can threaten the safety of Non-Party witnesses, officers, and  
 10 their families/associates.

11 Second, Defendants contend that municipalities and law enforcement  
 12 agencies have federal deliberative-executive process privilege, federal official  
 13 information privilege, federal law enforcement privilege, and federal attorney-  
 14 client privilege (and/or attorney work product protection) interests in the  
 15 personnel files of their peace officers – particularly as to those portions of  
 16 peace officer personnel files that contain critical self-analysis, internal  
 17 deliberations/decision-making or evaluation analysis, or communications  
 18 for the purpose of obtaining or rendering legal advice or analysis, potentially  
 19 including but not limited to evaluative/analytical portions of Internal Affairs  
 20 type records or reports, evaluative/analytical portions of supervisory records  
 21 or reports, and/or reports prepared at the direction of counsel, or for the  
 22 purpose of obtaining or rendering legal advice. *See Sanchez*, 936 F.2d 15  
 23 1033-1034; *Maricopa Audubon Soc’y v. United States Forest Serv.*, 108 F.3d  
 24 1089, 1092-105 (9<sup>th</sup> Cir. 1997); *Soto*, 162 F.R.D., at 613, 613 n. 4; *Kelly v.*  
 25 *City of San Jose*, 114 F.R.D. 654, 668-671 (N.D. Cal. 1987); *Tuite v. Henry*,  
 26 181 F.R.D. 175, 176-177 (D.D.C. 1998); *Hamstreet v. Duncan*, 2007 U.S.  
 27 Dist. LEXIS 89702 (D.Or. 2007); *Admiral Ins. Co. v. United States Dist. Ct.*,  
 28 881 F.2d 1486, 1492, 1495 (9<sup>th</sup> Cir. 1988). Defendants further contend that

1 such personnel file records are restricted from disclosure by the public  
 2 entity's custodian of records pursuant to applicable California law and that  
 3 uncontrolled release is likely to result in needless intrusion of officer privacy;  
 4 impairment in the collection of third-party witness information and  
 5 statements and related legitimate law enforcement investigations/interests;  
 6 and a chilling of open and honest discussion regarding and/or investigation  
 7 into alleged misconduct that can erode a public entity's ability to identify  
 8 and/or implement any remedial measures that may be required.

9 Third, Defendants contend that, since peace officers do not have the  
 10 same rights as other private citizens to avoid giving compelled statements, it  
 11 is contrary to the fundamental principles of fairness to permit uncontrolled  
 12 release of officers' compelled statements. (*See generally, Lybarger v. City of*  
 13 *Los Angeles* (1985) 40 Cal.3d 822, 838-830.)

14 Accordingly, although Plaintiff disputes the extent to which the  
 15 foregoing categories of documents should remain confidential during  
 16 discovery, the Parties hereby otherwise agree, that to expedite the flow of  
 17 information, to facilitate the prompt resolution of disputes over  
 18 confidentiality of discovery materials, to adequately protect information the  
 19 Parties are entitled to keep confidential, to ensure that the Parties are  
 20 permitted reasonable necessary uses of such material in preparation for and  
 21 in the conduct of trial, to address their handling at the end of the litigation,  
 22 and serve the ends of justice, a protective order for such information is  
 23 justified in this matter. It is the intent of the Parties that information will  
 24 not be designated as confidential for tactical reasons and that nothing be so  
 25 designated without a good faith belief that it has been maintained in a  
 26 confidential, non-public manner, and there is good cause why it should not  
 27 be part of the public record of this case.

28 The Parties jointly contend that there is typically a particularized need

1 for protection as to any medical or psychotherapeutic records, because of the  
2 privacy interests at stake. Because of these sensitive interests, a court order  
3 should address these documents rather than a private agreement between  
4 the Parties.

### 5 **3. DEFINITIONS**

6 3.1. Party: Any party to this action, including all of its officers,  
7 directors, employees, agents, consultants, retained experts, house counsel  
8 and outside counsel (and/or the support staff thereof).

9 3.2. Challenging Party: A Party or Non-Party that challenges the  
10 designation of information or items under this Order.

11 3.3. Non-Party: Any natural person, partnership, corporation,  
12 association, or other legal entity not named as a Party to this action.

13 3.4. Disclosure or Discovery Material: All items or information,  
14 regardless of the medium or manner generated, stored or maintained  
15 (including, among other things, testimony, transcripts, or tangible things)  
16 that are produced – or generated in disclosures or responses to discovery –  
17 by any Party in this matter.

18 3.5. “CONFIDENTIAL” Information or Items: Information (regardless  
19 of the medium or how generated, stored or maintained) or tangible things  
20 that qualify for protection under Federal Rule of Civil Procedure 26(c), and/or  
21 applicable federal privileges. This material includes, but is not limited to,  
22 medical and psychotherapeutic records; as well as peace officer personnel  
23 records as defined by California Penal Code sections 832.5, 832.7, 832.8 and  
24 the associated case law; and other similar confidential records designated as  
25 such.

26 3.6. Receiving Party: A Party that receives Disclosure or Discovery  
27 Material from a Producing Party, including a Party that has noticed or  
28 subpoenaed and is taking a depositions or comparable testimony.

1           3.7. Producing Party: A Party or Non-Party that produces Disclosure  
2 or Discovery Material in this action, including a Party that is defending a  
3 deposition noticed or subpoenaed by another Party; additionally, for the  
4 limited purpose of designating testimony subject to this Stipulated Protective  
5 Order pursuant to Section 6.2(b) (infra), a “Producing Party” shall also be  
6 construed to include a Party that is attending and/or participating in a Non-  
7 Party deposition noticed or subpoenaed by another Party.

8           3.8. Designating Party: A Party or Non-Party that designates  
9 information or items that it produces in disclosures or in responses to  
10 discovery as “CONFIDENTIAL.”

11           3.9. Protected Material: Any Disclosure or Discovery Material that is  
12 designated as “CONFIDENTIAL” under the provisions of this Stipulated  
13 Protective Order. (The term “Confidential Document” shall be synonymous  
14 with the term “Protected Materials” for the purposes of this Stipulated  
15 Protective Order.)

16           3.10. Outside Counsel: Attorneys who are not employees of a Party  
17 but who are retained to represent or advise a Party in this action (as well as  
18 their support staff).

19           3.11. House Counsel: Attorneys who are employees of a Party (as well  
20 as their support staff).

21           3.12. Counsel (without qualifier): Outside Counsel and House  
22 Counsel (as well as their support staff).

23           3.13 Expert: A person with specialized knowledge or experience in a  
24 matter pertinent to the litigation who has been retained by a Party or its  
25 counsel to serve as an expert witness or as a consultant in this action; as  
26 well as any person retained, designated, or disclosed by a Party as an expert  
27 pursuant to Federal Rule of Civil Procedure 26(a)(2) or other applicable  
28 discovery rule or statute.

3.14. Professional Vendors: Persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

#### 4. SCOPE OF PROTECTION

The protections conferred by the Parties pursuant to this Stipulated Protective Order cover not only Protected Material/Confidential Documents (as defined below), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by the Parties or their Counsel that might reveal Protected Material. However, the protections conferred by the Parties pursuant to this Stipulated Protective Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party.

Except to the extent specified herein (if any), any use of Protected Material at trial shall not be governed by this Stipulated Protective Order, but may be governed by a separate agreement or order.

#### 5. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.

1 Final disposition shall be deemed to be the later of (1) dismissal of all  
 2 claims and defenses in this action, with or without prejudice; and (2) final  
 3 judgment herein after the completion and exhaustion of all appeals,  
 4 rehearings, remands, trials, or reviews of this Action, including the time  
 5 limits for filing any motions or applications for extension of time pursuant to  
 6 applicable law.

## 7 **6. DESIGNATING PROTECTED MATERIAL**

8 6.1. Exercise of Restraint and Care in Designating Material for  
 9 Protection.

10 Each Party or Non-Party that designates information or items for  
 11 protection under this Order must take care to limit any such designation to  
 12 specific material that qualifies under the appropriate standards. The  
 13 Designating Party must designate for protection only those parts of material,  
 14 documents, items, or oral or written communications that qualify so that  
 15 other portions of the material, documents, items, or communications for  
 16 which protection is not warranted are not swept unjustifiably within the  
 17 ambit of this Order.

18 Mass, indiscriminate, or routinized designations are prohibited.  
 19 Designations that are shown to be clearly unjustified or that have been made  
 20 for an improper purpose (e.g., to unnecessarily encumber the case  
 21 development process or to impose unnecessary expenses and burdens on  
 22 other Parties) may expose the Designating Party to sanctions.

23 If it comes to a Designating Party's attention that information or items  
 24 that it designated for protection do not qualify for protection at all, or do not  
 25 qualify for the level of protection initially asserted, that Party or Non-Party  
 26 must promptly notify all other Parties that it is withdrawing the mistaken  
 27 designation.

28 6.2. Manner and Timing of Designations. Except as otherwise provided

1 in this Order, or as otherwise stipulated or ordered, material that qualifies  
2 for protection under this Order must be clearly so designated before the  
3 material is disclosed or produced.

4 Designation in conformity with this Order requires:

5 (a) For information in documentary form (e.g., paper or electronic  
6 documents, but excluding transcripts of depositions or other pretrial or trial  
7 proceedings), that the Producing Party affix at a minimum, the legend  
8 “CONFIDENTIAL” to each page that contains Protected Material. If only a  
9 portion or portions of the material on a page qualifies for protection, the  
10 Producing Party also must clearly identify the protected portion(s) (e.g., by  
11 making appropriate markings in the margins) and must specify, for each  
12 portion that it is “CONFIDENTIAL.” The placement of such “CONFIDENTIAL”  
13 stamp on such page(s) shall not obstruct the substance of the page’s (or  
14 pages’) text or content.

15 A Party or Non-Party that makes original documents available for  
16 inspection need not designate them for protection until after the inspecting  
17 Party has indicated which documents it would like copied and produced.  
18 During the inspection and before the designation, all of the material made  
19 available for inspection shall be deemed “CONFIDENTIAL.” After the  
20 inspecting Party has identified the documents it wants copied and produced,  
21 the Producing Party must determine which documents, or portions thereof,  
22 qualify for protection under this Order. Then, before producing the specified  
23 documents, the Producing Party must affix the “CONFIDENTIAL legend” to  
24 each page that contains Protected Material. If only a portion or portions of  
25 the material on a page qualifies for protection, the Producing Party also must  
26 clearly identify the protected portion(s) (e.g., by making appropriate  
27 markings in the margins).

28 (b) For testimony given in depositions or in other pretrial or trial

proceedings, that the Party or Non-Party offering or sponsoring the testimony identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony, and further specify any portions of the testimony that qualify as “CONFIDENTIAL.” When it is impractical to identify separately each portion of testimony that is entitled to protection, and when it appears that substantial portions of the testimony may qualify for protection, the Producing Party may invoke on the record (before the deposition or proceeding is concluded) a right to have up to twenty (20) days to identify the specific portions of testimony as “CONFIDENTIAL.” Only those portions of the testimony that are appropriately designated as “CONFIDENTIAL” for protection with the 20 days shall be covered by the provisions of this Stipulated Protective Order.

Transcript pages containing Protected Materials must be separately bound by the court reporter, who must affix to each such page the legend “CONFIDENTIAL,” as instructed by the Producing Party.

(c) For information produced in some form other than documentary, and for any other tangible items (including but not limited to information produced on disc or electronic data storage device), that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s), specifying the material as “CONFIDENTIAL.”

6.3. Inadvertent Failures to Designate. If timely corrected (preferably, though not necessarily, within 30 days of production or disclosure of such material), an inadvertent failure to designate qualified information or items as “CONFIDENTIAL” does not, standing alone, waive the Designating Party’s right to secure protection under this Stipulated Protective Order for such

1 material. If the material is appropriately designated as “CONFIDENTIAL”  
 2 after the material was initially produced, the Receiving Party, on timely  
 3 notification of the designation, must make reasonable efforts to assure that  
 4 the material is treated in accordance with the provisions of this Stipulated  
 5 Protective Order.

6 6.4. Alteration of Confidentiality Stamp Prohibited. A Receiving Party  
 7 shall not alter, edit, or modify any Protected Material so as to conceal,  
 8 obscure, or remove a “CONFIDENTIAL” stamp or legend thereon; nor shall a  
 9 Receiving Party take any other action so as to make it appear that Protected  
 10 Material is not subject to the terms and provisions of this Stipulated  
 11 Protective Order. However, nothing in this section shall be constructed so  
 12 as to prevent a Receiving Party from challenging a confidentiality designation  
 13 subject to the provisions of section 7, infra.

## 14 **7. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

15 7.1. Timing of Challenges. Any Party or Non-Party may challenge a  
 16 designation of confidentiality at any time prior to the final pre-trial  
 17 conference with the court in the matter. Unless a prompt challenge to the  
 18 Designating Party’s confidentiality designation is necessary to avoid  
 19 foreseeable substantial unfairness, unnecessary economic burdens, or a  
 20 later significant disruption or delay of the litigation, a Party does not waive  
 21 its right to challenge a confidentiality designation by electing not to mount a  
 22 challenge promptly after the original designation is disclosed.

23 7.2. Meet and Confer. Prior to challenging a confidentiality  
 24 designation, a Challenging Party shall initiate a dispute resolution process  
 25 by providing written notice of each specific designation it is challenging, and  
 26 describing the basis (and supporting authority or argument) for each  
 27 challenge. To avoid ambiguity as to whether a challenge has been made, the  
 28 written notice must recite that the challenge to confidentiality is being made

1 in accordance with this specific paragraph of this Stipulated Protective  
2 Order. The Parties shall attempt to resolve each challenge in good faith and  
3 must begin the process by conferring directly (in voice to voice dialogue,  
4 either in person, telephonically, or by other comparable means, but not by  
5 correspondence) within 14 days of the date of service of notice.

6 In conferring, the Challenging Party must explain the specific basis for  
7 its belief that the confidential designation was not proper and must give the  
8 Designating Party an opportunity to review the designated material, to  
9 reconsider the circumstances, and if no change in designation is offered, to  
10 explain the basis for the chosen designation. A Challenging Party may  
11 proceed to the next stage of the challenge process only if it has engaged in  
12 this meet and confer process first or establishes that the Designating Party  
13 is unwilling to participate in the meet and confer process in a timely manner.

14 Frivolous challenges, and those challenges made for an improper  
15 purpose (e.g., to harass or impose unnecessary expenses and burdens on  
16 other Parties), may expose the Party making the challenge to sanctions.

17 7.3. Judicial Intervention. If the Parties cannot resolve a  
18 confidentiality challenge without court intervention, the Challenging Party  
19 shall file and serve a motion to remove the “CONFIDENTIAL” designation in  
20 compliance with Local Rule 251.

21 The burden of persuasion in any such challenge proceeding shall be  
22 on the Designating Party, regardless of whether the Designating Party is the  
23 moving party or whether such Party sought or opposes judicial intervention.  
24 Frivolous challenges, and those made for an improper purpose (e.g., to  
25 harass or impose unnecessary expenses and burdens on other Parties) may  
26 expose the Challenging Party to sanctions. Unless the Designating Party has  
27 waived the confidentiality designation by failing to oppose a motion to remove  
28 the confidentiality designation, all Parties shall continue to afford the

1 material in question the level of protection to which it is entitled under the  
2 Producing Party's designation until the court rules on the challenge.

3 7.4. Withdrawal of "CONFIDENTIAL" Designation. At its discretion, a  
4 Designating Party may remove Protected Material/Confidential Documents  
5 from other or all of the protections and provisions of this Stipulated  
6 Protective Order at any time by any of the following methods:

7 (a) Express Written Withdrawal. A Designating Party may withdraw  
8 a "CONFIDENTIAL" designation made to any specified Protected  
9 Material/Confidential Documents from some or all of the protections of this  
10 Stipulated Protective Order by an express withdrawal in a writing signed by  
11 such Party (or such Party's counsel) that specifies and itemizes the  
12 Disclosure or Discovery Material previously designated as Protected  
13 Material/Confidential Documents that shall no longer be subject to all or  
14 some of the provisions of this Stipulated Protective Order. Such express  
15 withdrawal shall be effective when transmitted or served upon the Receiving  
16 Party. If a Designating Party is withdrawing Protected Material from only  
17 some of the provisions/protections of this Stipulated Protective Order, such  
18 Party must state which specific provisions are no longer to be enforced as to  
19 the specific material for which confidentiality protection hereunder is  
20 withdrawn: otherwise, such withdrawal shall be construed as a withdrawal  
21 of such material from all of the protections/provisions of this Stipulated  
22 Protective Order;

23 (b) Express Withdrawal on the Record: A Designating Party may  
24 withdraw a "CONFIDENTIAL" designation made to any specified Protected  
25 Material/Confidential Documents from all of the provisions/protections of  
26 this Stipulated Protective Order by verbally consenting in court proceedings  
27 on the record to such withdrawal; provided that such withdrawal specifies  
28 the Disclosure or Discovery Material previously designated as Protected

1 Material/Confidential Documents that shall no longer be subject to any of  
2 the provisions of this Stipulated Protective Order. A Designating Party is not  
3 permitted to withdraw Protected Material from only some of the  
4 protections/provisions of this Stipulated Protective Order by this method;  
5 and

6 (c) Implicit Withdrawal by Publication or Failure to Oppose Challenge.

7 A Designating Party shall be construed to have withdrawn a  
8 “CONFIDENTIAL” designation made to any specified Protected  
9 Material/Confidential Documents from all of the provisions/protections of  
10 this Stipulated Protective Order by either (1) making such Protected  
11 Material/Confidential Records part of the public record, including but not  
12 limited to attaching such as exhibits to any filing with the court without  
13 moving, prior to such filing, for the court to seal such records; (2) failing to  
14 timely oppose a Challenging Party’s motion to remove a  
15 “CONFIDENTIAL” designation to specified Protected Material/Confidential  
16 Documents. Nothing in this Stipulated Protective Order shall be construed  
17 as to require any Party to file Protected Material/Confidential Documents  
18 under seal, unless expressly specified herein.

19 **8. ACCESS TO AND USE OF PROTECTED MATERIAL**

20 8.1. Basic Principles. A Receiving Party may use Protected Material  
21 that is disclosed or produced by another Party or by a Non-Party in  
22 connection with this Action only for preparing, prosecuting, defending, or  
23 attempting to settle this litigation, up to and including final disposition of  
24 the above-entitled action, and not for any other purpose, including any other  
25 litigation or dispute outside the scope of this action. Such Protected Material  
26 may be disclosed only to the categories of persons and under the conditions  
27 described in this Stipulated Protective Order. When the above-entitled  
28 litigation has been terminated, a Receiving Party must comply with the

1 provisions of Section 14 below (FINAL DISPOSITION).

2 Protected Material must be stored and maintained by a Receiving Party  
3 at a location and in a secure manner that ensures that access is limited to  
4 the persons authorized under this Stipulated Protective Order.

5 8.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless  
6 otherwise ordered by the court or permitted in writing by the Designating  
7 Party, a Receiving Party may disclose any information or item designated  
8 “CONFIDENTIAL” only to:

9 (a) The Receiving Party’s Outside Counsel of Record in this action, as  
10 well as employees of said Outside Counsel of Record to whom it is reasonably  
11 necessary to disclose the information for this litigation;

12 (b) The officers, directors, and employees (including House Counsel)  
13 of the Receiving Party to whom disclosure is reasonably necessary for this  
14 litigation, each of whom, by accepting receipt of such Protected Material,  
15 thereby agree to be bound by this Stipulated Protective Order and who have  
16 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (c) Experts (as defined in this Stipulated Protective Order) of the  
18 Receiving Party to whom disclosure is reasonably necessary for this  
19 litigation, each of whom, by accepting receipt of such Protected Material,  
20 thereby agree to be bound by this Stipulated Protective Order and who have  
21 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (d) The court and its personnel;

23 (e) Court reporters, their staff and Professional Vendors to whom  
24 disclosure is reasonably necessary for this litigation, each of whom, by  
25 accepting receipt of such Protected Material, thereby agree to be bound by  
26 this Stipulated Protective Order and who have signed the “Acknowledgment  
27 and Agreement to Be Bound” (Exhibit A);

28 (f) During their depositions, witnesses and attorneys for witnesses, in

1 the action to whom disclosure is reasonably necessary each of whom, by  
2 accepting receipt of such Protected Material, thereby agree to be bound by  
3 this Stipulated Protective Order and who have signed the “Acknowledgment  
4 and Agreement to Be Bound” (Exhibit A). Pages of transcribed deposition  
5 testimony or exhibits to depositions that reveal Protected Material must be  
6 separately bound by the court reporter and may not be disclosed to anyone  
7 except as permitted under this Stipulated Protective Order; and

8 (g) The author or custodian of a document containing the information  
9 that constitutes Protected Material, or other person who otherwise possessed  
10 or knew the information.

11 8.3. Notice of Confidentiality. Prior to producing or disclosing  
12 Protected Material/Confidential Documents to persons to whom this  
13 Stipulated Protective Order permits disclosure or production (see Section  
14 8.2. supra), a Producing Party shall provide a copy of this Stipulated  
15 Protective Order to such persons so as to put such persons on notice as to  
16 the restrictions imposed upon them and provide and request that a copy of  
17 the “Acknowledgment and Agreement to Be Bound” be signed by them. For  
18 court reporters, Professional Vendors, and for witnesses being provided with  
19 Protected Material during a deposition, it shall be sufficient notice for counsel  
20 for the Producing Party to give the witness a verbal admonition (on the record  
21 for witnesses) regarding the provisions of this Stipulated Protective Order  
22 and such provisions’ applicability to the specified Protected Material at issue.

23 8.4. Reservation of Rights. Nothing in this Stipulated Protective Order  
24 shall be construed as to require any Producing Party to designate any records  
25 or materials as “CONFIDENTIAL.” Nothing in this Stipulated Protective  
26 Order shall be construed so as to prevent the admission of Protective Material  
27 into evidence at the time of this action, or in any appellate proceedings for  
28 this action, solely on the basis that such Disclosure or Discovery Material

1 has been designated as Protected Material/Confidential Documents.  
2 Notwithstanding the foregoing, nothing in this Stipulated Protective Order  
3 shall be construed as a waiver of any privileges or of any rights to object to  
4 the use or admission into evidence of any Protected Material in any  
5 proceeding; nor shall anything herein be construed as a concession that any  
6 privileges asserted or objections made are valid or applicable. Nothing in  
7 this

8 Stipulated Protective Order shall be construed so as to prevent the  
9 Designating Party (or its counsel or custodian of records) from having access  
10 to and using Protected Material designated by the Party in the manner in  
11 which such persons or entities would typically use such materials in the  
12 normal course of their duties or profession, except that the waiver of  
13 confidentiality provisions shall apply (see Section 7.4(c), supra).

14 8.5. Requirement to File Confidential Documents Under Seal.

15 Confidential Documents may be submitted in all law and motion proceedings  
16 before the Court if done so under seal pursuant to Federal Rules of Civil  
17 Procedure 5.2 and 26 and/or United States District Court, Eastern District  
18 Local Rules 141, 141.1, 143 and 251 (as applicable) and pursuant to the  
19 provisions of this Stipulated Protective Order.

20 This paragraph shall not be construed so as to prevent a Designating  
21 Party or counsel from submitting, filing, lodging, or publishing any document  
22 it has previously designated as a Confidential Document without compliance  
23 with this section's requirement to do so under seal (i.e., a producing-  
24 disclosing party or counsel may submit or publish its own Confidential  
25 Documents without being in violation of the terms of this Stipulated  
26 Protective Order.)

27 Furthermore, a Receiving Party shall be exempted from the  
28 requirements of this paragraph as to any specifically identified Confidential

1 Document(s) where, prior to submission or publication of the Confidential  
2 Document(s) at issue, the Designating Party of such specifically identified  
3 Confidential Document(s) has waived and/or withdrawn the protections of  
4 this Stipulated Protective Order.

5 A Receiving Party shall also be exempt from the sealing requirements  
6 of this section where the Confidential Documents/Protected Material at issue  
7 is/are not documents, records, or information regarding or incorporating:

8 (1) Private, personal information contained in peace officer  
9 personnel files (such as social security numbers, driver's license numbers or  
10 comparable personal government identification numbers, residential  
11 addresses, compensation or pension or personal property information, credit  
12 card numbers or credit information, dates of birth, tax records and  
13 information, information related to the identity of an officer's family members  
14 or co-residents, and comparable personal information about the officer or his  
15 family, marital status, and educational and employment history);

16 (2) Election of employee benefits;

17 (3) Employee advancement, appraisal or discipline;

18 (4) Complaints, or investigation of complaints, concerning an  
19 event or transaction in which he or she participated, or which he or she  
20 perceived, and pertaining to the manner in which he or she performed his or  
21 her duties; and

22 (5) Medical history, medical records or records of psychiatric or  
23 psychological treatment of any peace officer or party to this action.

24 Nothing in this paragraph shall be construed to bind the court or its  
25 authorized staff so as to limit or prevent the publication of any Confidential  
26 Documents to the jury or factfinder, at the time of trial of this matter, where  
27 the court has deemed such Confidential Documents to be admissible into  
28 evidence.

1           **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
2           **PRODUCED IN OTHER LITIGATION**

3           If a Party is served with a subpoena or a court order issued in other  
4 litigation that compels disclosure of any information or items designated in  
5 this action as “CONFIDENTIAL,” that Party must:

6           (a) Promptly notify in writing the Designating Party. Such  
7 notification shall include a copy of the subpoena or court order at issue;

8           (b) Promptly notify in writing the party who caused the subpoena  
9 or order to issue in the other litigation that some or all of the material covered  
10 by the subpoena or order is subject to this Protective Order. Such  
11 notification shall include a copy of this Stipulated Protective Order; and

12           (c) Cooperate with respect to all reasonable procedures sought to  
13 be pursued by the Designating Party whose Protected Material may be  
14 affected.

15           If the Designating Party timely seeks a protective order, the Party  
16 served with the subpoena or court order shall not produce any information  
17 designated in this action as “CONFIDENTIAL” before a determination by the  
18 court from which the subpoena or order issued, unless the Party has  
19 obtained the Designating Party’s permission. The Designating Party shall  
20 bear the burden and expense of seeking protection in that court of its  
21 confidential material and nothing in these provisions should be construed as  
22 authorizing or encouraging a Receiving Party in this action to disobey a  
23 lawful directive from another court.

24           **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
25           **PRODUCED IN THIS LITIGATION**

26           (a) The terms of this Stipulated Protective Order are applicable to  
27 information produced by a Non-Party in this action and designated as  
28 “CONFIDENTIAL.” Such information produced by Non-Parties in connection

1 with this litigation is protected by the remedies and relief provided by this  
2 Stipulated Protective Order. Nothing in these provisions should be construed  
3 as prohibiting a Non-Party from seeking additional protections.

4 (b) In the event that a Party is required, by a valid discovery request,  
5 to produce a Non-Party's confidential information in its possession, and the  
6 Party is subject to an agreement with the Non-Party not to produce the Non-  
7 Party's confidential information, then the Party shall:

8 (1) Promptly notify in writing the Requesting Party and the  
9 Non-Party that some or all of the information requested is subject to a  
10 confidentiality agreement with a Non-Party;

11 (2) Promptly provide the Non-Party with a copy of the Stipulated  
12 Protective Order in this action, the relevant discovery request(s), and a  
13 reasonably specific description of the information requested; and

14 (3) Make the information requested available for inspection  
15 by the Non-Party, if requested.

16 (c) If the Non-Party fails to seek a protective order from this court  
17 within 14 days of receiving the notice and accompanying information, the  
18 Receiving Party may produce the Non-Party's confidential information  
19 responsive to the discovery request. If the Non-Party timely seeks a  
20 protective order, the Producing Party shall not produce any information in  
21 its possession or control that is subject to the confidentiality agreement with  
22 the Non-Party before a determination by the court. Absent a court order to  
23 the contrary, the Non-Party shall bear the burden and expense of seeking  
24 protection in this court of its Protected Material.

25 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

26 If a Receiving Party learns that, by inadvertence or otherwise, it has  
27 disclosed Protected Material to any person or in any circumstance not  
28

1 authorized under this Stipulated Protective Order, the Receiving Party must  
2 immediately:

3 (a) notify in writing the Designating Party of the unauthorized  
4 disclosures;

5 (b) use its best efforts to retrieve all unauthorized copies of the  
6 Protected

7 Material;

8 (c) inform the person or persons to whom unauthorized disclosures  
9 were made of all the terms of this Stipulated Protective Order; and

10 (d) request such person or persons to consent to and execute the  
11 “Acknowledgment and Agreement to Be Bound” that is attached hereto as  
12 Exhibit A.

13 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR**  
14 **OTHERWISE PROTECTED MATERIAL**

15 When a Producing Party gives notice to Receiving Parties that certain  
16 inadvertently produced material is subject to a claim of privilege or other  
17 protection, the obligations of the Receiving Parties are those set forth in  
18 Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to  
19 modify whatever procedure may be established in an e-discovery order that  
20 provides for production without prior privilege review.

21 **13. PUBLICATION OF PROTECTED MATERIAL PROHIBITED**

22 13.1. Filing of Protected Material. Without advance written  
23 permission from the Designating Party, or a court order secured after  
24 appropriate notice to all interested Parties, a Receiving party may not file in  
25 the public record in this action any Protected Material. A Party that seeks to  
26 file under seal any Protected Material must comply with the applicable  
27 Federal and Local Rules.

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1           13.2. Public Dissemination of Protected Material. A Receiving Party  
 2 shall not publish, release, post, or disseminate Protected Material to any  
 3 persons except those specifically delineated and authorized by the Parties'  
 4 Stipulated Protective Order; nor shall a Receiving Party publish, release,  
 5 leak, post, or disseminate Protected Material/Confidential Documents to any  
 6 news media, member of the press, website, or public forum.

#### 7           **14. FINAL DISPOSITION**

8           Unless otherwise ordered or agreed in writing by the Producing Party,  
 9 within thirty (30) after the final termination of this action (defined as the  
 10 dismissal or entry of judgment by the above-named court, or if an appeal is  
 11 filed, the disposition of the appeal), upon written request by the Producing  
 12 Party, each Receiving Party must return all Protected Material to the  
 13 Producing Party or destroy such material. As used in this paragraph, "all  
 14 Protected Material" includes all copies, abstracts, compilations, summaries,  
 15 and any other format reproducing or capturing any of the Protected Material.  
 16 Whether the Protected Material is returned or destroyed, the Receiving Party  
 17 must submit a written certification to the Producing Party (and, if not the  
 18 same person or entity, to the Designating Party) by the 30-day deadline that  
 19 specifically (1) identifies (by category, where appropriate) all the Protected  
 20 Material that was returned or destroyed and (2) affirms that the Receiving  
 21 Party has not retained any copies, abstracts, compilations, summaries or  
 22 any other format reproducing or capturing any of the Protected Material.

23           Notwithstanding this provision, Counsel are entitled to retain an  
 24 archival copy of all pleadings, motion papers, trial, deposition, and hearing  
 25 transcripts, legal memoranda, correspondence, deposition and trial exhibits,  
 26 expert reports, attorney work product, and consultant and expert work  
 27 product, even if such materials contain Protected Material; however, any  
 28 such archival copies that contain or constitute Protected Material remain

1 subject to this Protective Order as set forth in Section 5 above. This court  
2 shall retain jurisdiction in the event that a Designating Party elects to seek  
3 sanctions for violation of this Stipulated Protective Order.

4 **15. MISCELLANEOUS**

5 15.1. Right to Further Relief. Nothing in this Stipulated Protective  
6 Order abridges the right of any person to seek its modification by the court  
7 in the future.

8 15.2. Right to Assert Other Objections. By stipulating to the entry of  
9 this Protective Order no Party waives any right it otherwise would have to  
10 object to disclosing or producing any information or item on any ground not  
11 addressed in this Stipulated Protective Order. Similarly, no Party waives any  
12 right to object on

13 any ground to use in evidence of any of the material covered by this Protective  
14 Order.

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**IT IS SO STIPULATED.**

Dated: October 16, 2024

ALBERT GARCIA A LAW CORPORATION

By: /s/ Albert Garcia

ALBERT GARCIA,  
Attorney for Plaintiff  
URIEL NIETO

Dated: October 16, 2024

HERR PEDERSEN & BERGLUND LLP

By: /s/ Leonard C. Herr

LEONARD C. HERR  
CAREN L. CURTISS  
Attorneys for Defendants,  
CITY OF VISALIA, CHIEF JASON  
SALAZAR, OFFICER ANTONIO  
MATTOS, OFFICER ALEXANDER CRUZ  
and SERGEANT RYAN PARK

Stipulated Protective Order

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# Exhibit A

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type  
full name], of \_\_\_\_\_ [print or type  
full address], declare under penalty of perjury that I have read in its entirety and  
understand the Stipulated Protective Order that was issued in the United States  
District Court for the Eastern District of California on \_\_\_\_\_ [date]  
in the case of *Nieto v. City of Visalia, et al.*, bearing case number 1:24-cv-00741-  
JLT-BAM.

I agree to comply with and to be bound by all the terms of this Stipulated  
Protective Order and I understand and acknowledge that failure to so comply could  
expose me to sanctions and punishment in the nature of contempt.

I solemnly promise that I will not disclose in any manner any information or  
item that is subject to this Stipulated Protective Order to any person or entity except  
in strict compliance with the provisions of the Order.

I further agree to submit to the jurisdiction of the United States District Court  
for the Eastern District of California, for the purpose of enforcing the terms of the  
Stipulated Protective Order, even if such enforcement proceedings occur after the  
termination of this action.

Dated: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

**ORDER**

Having considered the above stipulation and finding good cause, the Court adopts the signed stipulated protective order with the amendment that paragraph 14 is amended from “This court shall retain jurisdiction in the event that a Designating Party elects to seek sanctions for violation of this Stipulated Protective Order” to “This court shall retain jurisdiction through the final disposition of this matter in the event that a Designating Party elects to seek court sanctions for violation of this Stipulated Protective Order.” The Court will not retain jurisdiction after final judgment or dismissal of the action, as it does not have perpetual jurisdiction over this matter.

The parties are advised that pursuant to the Local Rules of the United States District Court, Eastern District of California, any documents subject to the protective order to be filed under seal must be accompanied by a written request which complies with Local Rule 141 prior to sealing. The party making a request to file documents under seal shall be required to show good cause for documents attached to a non-dispositive motion or compelling reasons for documents attached to a dispositive motion. *Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665, 677-78 (9th Cir. 2009). Within five (5) days of any approved document filed under seal, the party shall file a redacted copy of the sealed document. The redactions shall be narrowly tailored to protect only the information that is confidential or was deemed confidential.

Additionally, the parties shall consider resolving any dispute arising under the protective order according to the Court’s informal discovery dispute procedure.

IT IS SO ORDERED.

Dated: October 17, 2024

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE